



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 5, 1952

Hon. Olin Culberson, Chairman
Railroad Commission of Texas
Austin, Texas

Opinion No. V-1402

Re: Statutory penalty
for failure of a
railroad to keep
its ticket office
open for half an
hour prior to the
departure of trains
which are late.

Dear Sir:

You have requested the opinion of this office as to the possible legal consequences involved when a Texas railroad has advised its ticket office employees not to keep the ticket offices open for half an hour prior to the departure of trains operating behind schedule.

Your question requires a construction of Article 6416, V.C.S., which reads as follows:

"The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that when the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charges in no case shall be less than twenty-five cents; and provided, further that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile. Railroads shall be required to keep their ticket offices open for half an hour prior to the departure of trains, and upon failure to do

so they shall not charge more than three cents per mile." (Emphasis supplied)

Initially we must determine whether this statute requires a railroad to keep its ticket office open for half an hour prior to the scheduled departure or prior to the actual departure of passenger trains, when there is a variance between such times.

In discussing the particular portion of Article 6416, with which we are here concerned, the Texas Supreme Court used the following language in Missouri Pacific Ry. Co. v. McClanahan, 66 Tex. 530, 1 S.W. 576 (1886):

" . . . The section referred to fixes the passenger fare upon all railroads in this state at three cents per mile, and contains the following provisions: 'Provided, however, that where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold: * * * provided, further, railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so, they shall not charge more than three cents per mile.' The first provision in the section as quoted, was obviously intended to induce passengers to buy tickets before entering the cars, and was doubtless inserted in the interest and for the protection of the railroad companies. The object of the second, on the other hand, was to protect passengers against the contingency of having to pay the advanced rate of fare without being afforded ample opportunity to procure tickets. . . .

"In the opinion of the court, if these companies keep their ticket offices open half an hour before the departure of trains, they have a right to claim of passengers entering the cars without tickets, fare at the rate of four cents per mile; but, if the office be not so kept open, in no case can more than three cents per mile be rightfully demanded . . ."

Although the Texas Court did not have before it a situation where the train departed behind schedule, we find authorities in other jurisdictions having statutes similar to the Texas statute where that question has been decided.

Kansas has a statute very similar to Article 6416, V.C.S. It requires railroads to keep their ticket offices open for at least thirty minutes "immediately prior to the starting of such train." In Atchison, T. & S.F. Ry. Co. v. Dwelle, 44 Kan. 394, 24 Pac. 500 (1890), the Kansas Supreme Court held that keeping the ticket office open for thirty minutes prior to the scheduled time of departure, but not until the actual delayed departure, was not sufficient to comply with the Kansas statute when the passenger train was behind time.

On the other hand, in the case of Pondee v. Lexington & E. Ry. Co., 164 Ky. 69, 174 S.W. 786 (1915), under a Kentucky statute which required railroads to keep their ticket offices open at least thirty minutes "immediately preceding the scheduled time of departure of all passenger trains", the Court held that the company was only required to keep its offices open for thirty minutes prior to the scheduled time of departure, as the statute did not require the company to keep its offices open until a delayed train had arrived and departed.

The Texas statute makes no distinction between the scheduled departure and the actual departure of a late train. As was pointed out in Missouri Pacific Ry. Co. v. McClanahan, supra, the purpose of the Texas statute is to afford a passenger an "ample opportunity" to procure a ticket, and this would unquestionably be denied such a passenger if the ticket office were not kept open for at least half an hour before the departure of a late train, particularly is this true because the circumstance of the train's being late is beyond the control of the passenger.

We therefore hold that railroads must keep their ticket offices open at least half an hour prior to the actual departure of their passenger trains, irrespective of whether the train departs on schedule.

You also inquire as to the legal consequences of a railroad's failing to keep its ticket offices open as we have indicated herein. The statute clearly provides that in the event of such failure, the company may not charge more than three cents per mile as passenger fare. Gulf C. & S.F. Ry. Co. v. Dyer, 95 S.W. 12 (Tex. Civ. App. 1906, error ref.)

SUMMARY

Railroads are required to keep their ticket offices open for half an hour prior to the actual departure of passenger trains. Upon their failure to do so, they are not authorized to charge more than three cents per mile as passenger fare. Article 6416, V.C.S.

Yours very truly,

APPROVED:

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